Supreme Court U.S.
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No. _____

In The

Supreme Court of the United States

ROBERT NARVELL CARNAHAN,

Petitioner,

vs.

THE STATE OF TEXAS,

Respondent.

On Petition For A Writ Of Certiorari To The Texas Court Of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Were Petitioner's Due Process rights under the Fourteenth Amendment of the United States Constitution violated when the Texas courts held that he forfeited his right to a competency inquiry when there is no evidence that he was found to be competent after the trial court had ordered a pre-trial psychiatric evaluation?

Should this Honorable Court apply its established jurisprudence of indulgence of every reasonable presumption against waiver of fundamental constitutional rights in this case when the trial court had a bona fide doubt of Petitioner's competency to stand trial and there is no evidence that Petitioner made an intentional relinquishment of the right to a competency inquiry?

PARTIES TO THE PROCEEDING

ROBERT NARVELL CARNAHAN, Petitioner

HONORABLE CARLOS VALDEZ, District Attorney of Nueces County, Texas

HONORABLE DOUGLAS K. NORMAN, Assistant District Attorney of Nueces County, Texas, Criminal Appellate Attorney

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

Robert Narvell Carnahan v. The State of Texas, 2005 Tex. App. LEXIS 4262 (Tex.App. – Corpus Christi 2004, pet refused, 2006 Tex. Crim. App. LEXIS 31 (Tex. Crim. App., Jan. 18, 2006) Appendix App. 1. Unpublished opinions.

BASIS FOR SUPREME COURT JURISDICTION

The Court of Appeals of Texas, Thirteenth District, Corpus Christi, entered the unpublished, memorandum opinion and judgment at issue on June 2, 2005. All filings in the lower appellate court were timely.

On October 6, 2006, Petitioner filed a timely Petition For Discretionary Review with the Texas Court of Criminal Appeals. Appendix App. 38. The present petition is timely filed under 28 U.S.C. §2101(d) and under Rule 13.1 of this Honorable Court as the discretionary review by the Texas Court of Criminal Appeals was refused on January 18, 2006. Appendix App. 38. Thus, Petitioner seeks review of the lower appellate court by writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED IN THIS CASE

Constitution of the United States, Amendment XIV, Due Process Clause.

STATEMENT OF THE CASE

Petitioner is now 77 years of age. He was convicted in the 347th district court of Nueces County, Texas of sexual offenses under the Texas Penal Code against his step-daughters. The indictment upon which Petitioner's convictions were based, was returned on November 29, 2001, stating offenses that started in November of 1993 and which were first communicated in 2001 during a bitter divorce proceeding between Petitioner and his ex-wife.

Petitioner received a sentence of 40 years on January 10, 2003. Thus, if relief is not granted, Petitioner, who has no previous criminal convictions, will spend the rest of his life in prison.

In a pre-trial hearing, on August 12, 2002, the trial court made a finding that Petitioner should be examined by a psychiatrist or psychologist to determine if he was competent to stand trial. Appendix App. 5.

The trial transcript demonstrates in the court of first instance when the basis for the federal question involved was first brought to the attention of the trial judge. Right after evidence of the lack of Petitioner's competency to stand trial was presented to the trial court, the Hon. Joaquin Villarreal, the trial court made the following ruling[1] to which the Respondent concurred:

> Judge Villarreal: " . . . I have to psych him [Petitioner] or I'm gonna be reversed . . . "
> [R.R. Vol. 2, p. 38, line 8].

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[1] R.R. [Reporter's Record] is the transcript of proceedings in the trial court transcribed by the Official Court Reporter.

> Judge Villarreal: " . . . I'm gonna have him [Petitioner] psyched . . . " [R.R. Vol. 2, p. 38, line 21].

The trial transcript, shortly thereafter, demonstrates that Respondent concurred with the trial court that there was evidence that Petitioner lacked the requisite competency to stand trial:

> Ms. Gail Gleimer: [Assistant District Attorney]: Judge, this motion says he requests Dr. Capitain to do it. Can I go ahead an (sic) call the office and see if he can do it today or tomorrow, immediately?
>
> Judge Villarreal: Doctor Capitain will be my first choice. Contact him and see how soon he can do it. [R.R. Vol. 2, p. 39, lines 22-25; p. 40, lines 1-3].

It is undisputed that there was no competency hearing or inquiry concerning Petitioner's competency to stand trial. It is further undisputed that Petitioner never waived his right to a competency inquiry or hearing.

The Thirteenth Court of Appeals recognized that Petitioner raised a federal constitutional question concerning the lack of a hearing or inquiry concerning his competency wherein the lower Court states:

> " . . . In both Texas and the federal system, 'it has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.' *McDaniel v. State*, 98 S.W.3d 704, 709 (Tex.Crim.App. 2003). The conviction of an accused person while he is legally incompetent

> violates the due process. *Id.* Thus, to protect a criminal defendant's constitutional rights, a trial court must inquire into the accused's mental competence once the issue is sufficiently raised. *Id.*" Appendix App. 2.

To support this statement the Court cited *McDaniel v. State*, 98 S.W.3d 704, 709 (Tex.Crim.App. 2003). At this point, this Honorable Court might inquire as to the location of the federal question. The above quote from the Thirteenth Court of Appeals was a verbatim quote from the Court of Criminal Appeals in *McDaniel, supra*.

The lower appellate court omits the reference by the Texas Court of Criminal Appeals to relevant decisions of this Honorable Court.

Thus, the quote from the Court of Criminal Appeals by the lower appellate court omitted the Supreme Court decisions relevant to this case. This is correctly shown by referring to the exact statement by the Court of Criminal Appeals:

> " . . . In both Texas and the federal system, 'it has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial."[10] The conviction of an accused person while he is legally incompetent violates due process.[11] Thus, to protect a criminal defendant's constitutional rights, a trial court must inquire into the accused's mental competence once the issue is sufficiently raised . . . ".[12]
> *McDaniel v. State*, 98 S.W.3d 704, 709 (Tex.Crim.App. 2003).

[10] *Drope v. Missouri*, 420 U.S. 162, 171, 43 L. Ed. 2d 103, 95 S. Ct. 896 (1975).

[11] *Pate v. Robinson*, 383 U.S. 375, 378, 15 L. Ed. 2d 815, 86 S. Ct. 836 (1966); *Lopez v. State*, 909 S.W.2d 512, 514 (Tex. Crim. App. 1995).

[12] *Pate v. Robinson*, 383 U.S. at 385.

Thus, a federal question is clearly recognized by the court of last resort in Texas on questions of criminal law.

REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals is the Texas Court of last resort on questions of criminal law. It has refused to review the lower appellate court's finding that the trial court had no duty to conduct at least a competency inquiry after the trial court had ordered that Petitioner undergo a competency examination after receiving evidence of incompetency. Both courts have recognized that Petitioner has presented a federal question.

Petitioner was forced to undergo trial without a competency evaluation. This was a violation of his rights to due process under the Fourteenth Amendment of the United States Constitution. In its refusal to reverse the inferior appellate court, the Court of Criminal Appeals, by default, decided an important federal question in a way that conflicts with relevant decisions of this Honorable Court.

In addition, there is now pending on this Honorable Court's docket Cause No. 05-5966, *Clark v. Arizona*, which is set for oral argument on April 19, 2006. Although these

issues involve the test of insanity as a defense to an offense, it certainly involves related due process issues pertaining to the instant case's issues of competency to stand trial. Thus, the granting of this Petition for Certiorari would foster an efficiency of judicial resources as the issues of the instant case and the *Clark v. Arizona* case would overlap. Thus, if this Honorable Court were to grant this Petition the result would be consistency in the law of insanity or mental disease or defect as a defense to crime and also consistency in the related issue of competency to stand trial.

ARGUMENT TO SUPPORT GRANTING THE PETITION

THE DECISION OF THE TEXAS COURT OF CRIMINAL APPEALS FAILS TO FOLLOW OPINIONS OF THE SUPREME COURT.

AN INCOMPETENT DEFENDANT CANNOT KNOWINGLY WAIVE A COMPETENCY INQUIRY

In the instant case a judicial determination had been made ordering a "psychiatric examination". Appendix App. 5.

The lower appellate court found that Petitioner did not object to the trial court's proceeding with the trial and that he testified at his trial. Appendix App. 5. They concluded that Petitioner forfeited any purported error because he failed to object to the trial court's proceeding to trial. Appendix App. 6.